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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,314	12/11/2001	David Allen Loewenstein	FERN-P008	2903
7590	08/09/2004		EXAMINER	
David A. Loewenstein 802 King Street Rye Brook, NY 10573			RADA, ALEX P	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/015,314	LOEWENSTEIN, DAVID ALLEN
	<b>Examiner</b>	<b>Art Unit</b>
	Alex P. Rada	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 April 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-14, 16-19, 23 and 24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-14, 16-19, 23 and 24 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

In response to the Non-responsive amendment filed April 23, 2004 in which the applicant amends claims 1-2, 4, 10, 17, and 23-24, cancels claims 15 and 20-22, and claims 1-14, 16-19, and 23-24 are pending in this office action.

***Terminal Disclaimer***

1. The terminal disclaimer filed on December 3, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of co-pending application 10/211,063 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose the method of claim 24. Applicant refers to page 2, paragraph 4 of the specification but the disclosure only references to the number of coins per

hand played. The examiner request applicant to point in the specification the specific embodiment of claim 24.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24, the language of “dealing one or more pairs of five card hand, each pair of hands has eight cards consisting of three interior cards” is vague and indefinite because the number of cards per hand can not be determined. If you have two pairs of five card hands the total number of cards would be a total of ten cards. How can each pair of five card hand having eight cards consisting of three interior cards?

In claims 1-9 and 17-19, the preamble recites a “video poker game” yet no program or any relation to a video poker appear to be in the body of the claim, which leads to wonder if applicant is claiming an apparatus or method.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 8-12, 14, 17-19, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks '260 in view of Wood '587.

8. Marks discloses the following:

A poker game having cards represented a four sided shape (columns 89 and 90) each side is a separate hand that has five cards, three interior cards and two corner cards, the corner cards are shared, and the resulting hands are compared to a payable as recited in claims 1, 17, and 23-24.

The at least one visual display, the visual display has cards represented in an n-sided closed figure (columns 89 and 90), each side of the figure is a separate hand that has five cards having three interior cards and two corner cards, the corner cards are shared with two adjacent hands, and the resulting hands are compared to a payable as recited in claim 10.

Two pairs of hand are dealt so that each hand has three interior cards and all hands share two common end cards (columns 89 and 90) as recited in claim 19.

Dealing cards in a four sided shape having 16 cards (columns 89 and 90), each side is a separate hand that has five cards having three interior cards and two corner cards, the corner card are shared with two adjacent hand, and paying the player according to amounts set out in the payable for each hand as recited in claim 23.

Marks does not expressly disclose the following:

Exchanging cards from one hand to another hand as recited in claims 1, 10, 17, and 23-24.

Exchanging corner cards but the interior cards are not exchanged as recited in claim 4.

An additional card is dealt that can be exchanged with one of the corner cards as recited in claims 6 and 14.

Wood teaches the following:

Exchanging cards from one hand to another hand (column 2, lines 25-54) or an additional card capable of being exchanged, in which the examiner interprets the additional card to be exchange to be the traditional exchanging of cards in poker to be an equivalent to the additional card that can be exchanged as recited in claims 1, 4, 10, 14, 17, and 23-24. By having the ability of exchanging cards or designate cards, one of ordinary skill in the art would provide game players a chance to modify their poker had to increase their chances for a better reward.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Marks to include exchanging cards from one hand to another hand as taught by Wood to provide game players a chance to modify their poker had to increase their chances for a better reward.

At the time the invention was made, it would have been an obvious to a person of ordinary skill in the art to designate cards that are faced up or faced down because having cards that are designated to face up or face down would provide game players with the same random chance outcome, in which Applicant has not disclosed that the three cards for each hand are dealt face up/down and

the corner cards are dealt face up/down as recited in claims 2-3, 11-12, and 18 provides an advantage or solves a stated problem.

At the time the invention was made, it would have been an obvious to a person of ordinary skill in the art to display a plurality of cards in a different configuration because having cards displayed in a four, six, eight, ten, or n-sided shape provide game players with the same random chance outcome, in which Applicant has not disclosed that the different laid out card configurations as recited in claims 1, 5, 8-10, and 17 provides an advantage or solves a stated problem.

The underlying game of applicant's invention is the same as the cited prior art. The underlying game of applicant's invention is a multi-hand poker game having designated wild cards and a swapping feature to exchange with other hands to increase the chance of multiple winning poker hands. The cited prior art discloses a multi-hand poker game having designated wild cards and an exchange feature to trade cards from one hand to another to increase the chances of multiple winning poker hands. The only difference between the applicant's invention and the cited prior art is the different configuration types of how the cards are laid out on a display.

9. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks '260 in view of Wood '587 as applied to claims 1 and 10 above, and further in view of Garrod '373.

10. Marks in view of Wood disclose the claimed invention as discussed above except for a card designated to be a wild card.

Garrod teaches a card being a wild card (summary). By having a wild card, one of ordinary skill in the art would be able to provide game players with the opportunity for an increased payout.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Marks to further include a wild card as taught by Garrod to provide game players a chance at an increased outcome.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marks '260 in view of Wood '587 as applied to claim 10 above, and further in view of Wachtler '208.

12. Marks in view of Wood disclose the claimed invention as discussed above except for the player paying for each card exchange.

Wachtler teaches the method of paying for each card exchanged. By paying for each card exchange, one of ordinary skill in the art would be able to provide game players with the opportunity to increase the chance of a bigger payout outcome.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Marks to further include paying for each card exchange as taught by Wachtler to provide game players an opportunity for a guaranteed payout outcome.

#### *Response to Arguments*

13. Applicant's arguments with respect to claims 1-14, 16-19, and 23-24 have been considered but are moot in view of the new ground(s) of rejection.

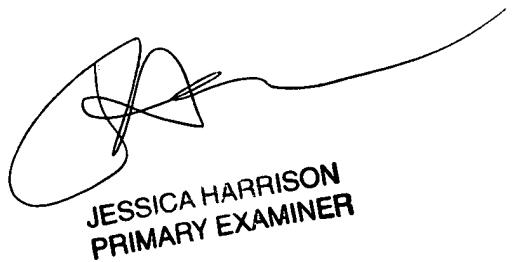
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Jessica Harrison can be reached on 703-308-2217. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

APR



JESSICA HARRISON  
PRIMARY EXAMINER